UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6494

KEVIN K. JOHNSON,

Petitioner - Appellant,

versus

COLIE RUSHTON, Warden; CHARLES CONDON, Attorney General of the State of South Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Cameron M. Currie, District Judge. (CA-02-1791-3-22)

Submitted: July 28, 2003 Decided: August 12, 2003

Before WIDENER, WILKINSON, and NIEMEYER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kevin K. Johnson, Appellant Pro Se. Derrick K. McFarland, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

PER CURIAM:

Kevin Johnson, a South Carolina prisoner, seeks to appeal the district court's order accepting the report and recommendation of a magistrate judge and denying relief on his 28 U.S.C. § 2254 (2000) petition. An appeal may not be taken to this court from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue for claims addressed by a district court on the merits absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). As to claims dismissed by a district court solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We have independently reviewed the record and conclude Johnson has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322 (2003). Accordingly, we deny a certificate of appealability and dismiss the appeal. See 28 U.S.C. § 2253(c) (2000). We dispense with oral argument because

the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED